

ND-2020-30 E/C
293913

**Before the
Federal Communications Commission
Washington, DC 20554**

BELLSOUTH
TELECOMMUNICATIONS, LLC
d/b/a AT&T NORTH CAROLINA and
d/b/a AT&T SOUTH CAROLINA,

Complainant,

v.

DUKE ENERGY PROGRESS, LLC,

Defendant.

Proceeding No. 20-____
Bureau ID No. EB-20-MD-____

RECEIVED
SEP 08 2020
PSC SC
MAIL / DMS

AT&T'S FIRST SET OF INTERROGATORIES TO DUKE ENERGY PROGRESS

Complainant, BellSouth Telecommunications, LLC d/b/a AT&T North Carolina and d/b/a AT&T South Carolina ("AT&T"), by and through its undersigned counsel, requests that Defendant, Duke Energy Progress, LLC ("Duke Energy Progress"), answer the following Interrogatories within twenty (20) calendar days of the date of this request pursuant to 47 C.F.R. § 1.730(c). Answers should be served on AT&T's counsel, Christopher S. Huther, by email at chuther@wiley.law and by mail at Wiley Rein LLP, 1776 K Street NW, Washington, DC 20006.

The information sought in each Interrogatory is either necessary to the resolution of this dispute, or will become necessary to the resolution of this dispute should Duke Energy Progress seek to rebut the presumption set forth at 47 C.F.R. § 1.1413(b), because each seeks information regarding the pole attachment rental rate for AT&T's use of Duke Energy Progress's poles that is "just and reasonable" under 47 U.S.C. § 224 and the decisions of the Federal Communications Commission and its Enforcement Bureau. The information sought in each Interrogatory is not presently available from any other source, as it is not obtainable from a public source, is within

Duke Energy Progress's sole possession, custody, or control, or is otherwise not available to AT&T.

DEFINITIONS

The following terms have the following meanings, unless the context requires otherwise:

1. "Any" and "all" include "any and all" and "each" and "every" include "each and every." "And" and "or" means both the conjunctive and the disjunctive.
2. "AT&T" means BellSouth Telecommunications, LLC d/b/a AT&T North Carolina and d/b/a AT&T South Carolina and any persons associated with it, including, but not limited to, officers, directors, employees, agents, representatives, predecessors, successors, assigns, attorneys, and anyone acting or purporting to act on its behalf or on behalf of any of them.
3. "CLEC" means competitive local exchange carrier.
4. "Concerning," and derivatives thereof, has the broadest meaning that may be accorded to it and includes, but is not limited to, directly or indirectly relating, pertaining, mentioning, referencing, referring to, describing, constituting, containing, embodying, being connected with, setting forth, discussing, commenting upon, analyzing, supporting, establishing, contradicting, proving, disproving, or reflecting in any way.
5. "FCC" means Federal Communications Commission.
6. "Duke Energy Progress" means Duke Energy Progress, LLC and any persons associated with it, including, but not limited to, each of its current or former parents, subsidiaries, affiliates, officers, directors, independent contractors, agents, servants, attorneys, successors, predecessors, representatives, investigators, experts, employees, ex-employees, consultants,

representatives and others who are in possession of, or who may have obtained, information for or on behalf of the above-mentioned persons or entities.

7. “Identify” means:

(a) When referring to a person, the person’s full name, title, business address, e-mail address, and telephone number, and relationship to Duke Energy Progress. If you do not know the person’s current information, provide the person’s last known business affiliation and title, business address and telephone number, residential address and telephone number, e-mail address, and relationship to Duke Energy Progress.

(b) When referring to a document, the type of document (*e.g.*, letter, memorandum, e-mail, etc.) or some other means of identification, its author(s) and addressee(s), its date, its subject, and the name of any person in whose custody the document is kept in the usual course of business.

(c) When referring to an oral communication, the type of communication, the persons who participated in, heard, or witnessed it, the date of the communication, and the subject and substance of the communication, and identify any documents that set forth, summarize or refer to any portion of such oral communication.

(d) When referring to a business organization, the corporate name or other names under which said organization does business and the location and phone number of its principal place of business.

(e) When referring to data, the type of data, its vintage, the geographic location where the data was collected, the rules or guidelines governing the collection of the data, and all facts, figures, measurements, and other data collected and analyses performed.

If any of the foregoing information requested is not known, the response shall indicate what of the foregoing information is not known.

8. “JUA” means the Amended and Restated Joint Use Agreement between Carolina Power & Light Company and BellSouth Telecommunications, Inc. entered in 2000 and updated regularly with revised cost schedules.

9. “Joint Use Agreement” means any agreement entered into by Duke Energy Progress and any incumbent local exchange carrier that grants access to Duke Energy Progress’s distribution poles, including any amendments, exhibits, appendices, and operational guidelines, practices, or policies.

10. “License Agreement” means any agreement entered into by Duke Energy Progress and any CLEC, cable company, or wireless provider that grants access to Duke Energy Progress’s distribution poles, including any amendments, exhibits, appendices, and operational guidelines, practices, or policies.

11. “Parties” means Duke Energy Progress and AT&T.

12. “Person” or “Entity” have the fullest meanings allowed by law and include, without limitation, a natural person, corporation, firm, partnership, association, labor union, joint venture, proprietorship, governmental body, or any other organization, business, or legal entity, including all predecessors or successors in interest, and any officer, agent, employee, or representative of any of the foregoing.

13. “Pole Attachment Complaint” means the Pole Attachment Complaint and supporting Affidavits and Exhibits filed by AT&T against Duke Energy Progress at the Federal Communications Commission on September 1, 2020.

14. “You” and “your” have the same meaning as Duke Energy Progress.

15. Terms not otherwise defined have the same meaning as they are alleged to have in the Pole Attachment Complaint. The past tense includes the present tense, and vice versa. The singular includes the plural, and vice versa. Terms are gender neutral and the use of one gender includes all genders.

INSTRUCTIONS

1. In response to each Interrogatory, first restate the Interrogatory.
2. Provide all responsive information that is in the possession, custody or control of Duke Energy Progress or any other person acting in the interest of, or on behalf of, Duke Energy Progress. If Duke Energy Progress does not have responsive information, or has information that is only partially responsive, Duke Energy Progress should provide the available information and identify the information that is not available.
3. If any response contains any objection, state with specificity the grounds for the objection and the part of the Interrogatory to which the objection is made but respond to the Interrogatory fully insofar as it is not deemed objectionable.
4. If any information requested was, but is no longer, in your possession or subject to your control, or is no longer in existence, state whether it is missing or lost, destroyed, transmitted or transferred voluntarily or involuntarily to others, or otherwise disposed of and explain the circumstances surrounding the authorization for such disposition and the date or approximate date thereof.
5. These interrogatories are continuing and Duke Energy Progress must supplement its responses upon discovering or learning of additional information in its custody, possession, or control that was not produced or included in an earlier response.

INTERROGATORIES

1. Beginning with the 2015 rental year, state the annual pole attachment rental rate that Duke Energy Progress contends is “just and reasonable” for AT&T’s use of Duke Energy Progress’s poles under 47 U.S.C. § 224(b). Include in your response all facts on which you rely for your contention that the annual pole attachment rental rates are “just and reasonable” under 47 U.S.C. § 224(b), the formula, calculations, inputs, assumptions, and source data used to calculate each annual pole attachment rental rate, and the corresponding pole attachment rental rate that would apply to Duke Energy Progress’s use of AT&T’s poles.

2. Beginning with the 2015 rental year, identify all entities that have had a Joint Use Agreement or License Agreement with Duke Energy Progress and state whether the entity is an incumbent local exchange carrier, CLEC, cable company, or wireless provider.

3. State the rates, terms, and conditions of all Joint Use Agreements and License Agreements with Duke Energy Progress that were in effect at any time from the 2015 rental year forward. Include in your response the name of the entity that is a party to the Joint Use Agreement or License Agreement with Duke Energy Progress and the dates on which the Joint Use Agreement or License Agreement with Duke Energy Progress was in effect. In lieu of quoting each rate, term, and condition from each Joint Use Agreement and License Agreement, Duke Energy Progress may produce a copy of each Joint Use Agreement and License Agreement.

4. Beginning with the 2015 rental year, state the annual pole attachment rental rate that Duke Energy Progress charged each entity identified in response to Interrogatory 2, the number of poles or attachments for which the pole attachment rental rate was charged, and whether the entity uses Duke Energy Progress’s poles pursuant to a License Agreement or a Joint

Use Agreement. Include in your response the formula, calculations, inputs, assumptions, and source data used to calculate each pole attachment rental rate charged and state whether the rate was charged on a per-pole, per-attachment, or other basis and whether the rate was paid.

5. With respect to each License Agreement identified in response to Interrogatory 3, identify any advantage or benefit that Duke Energy Progress contends AT&T receives over and above those provided to the attaching entity. Include in your response, beginning with the 2015 rental year, a quantification of the annual monetary value of each such claimed advantage or benefit expressed on a per-pole basis, the language from each License Agreement that establishes or supports the claimed advantage or benefit, and all data, formulas, calculations, inputs, assumptions, and source data used to quantify the monetary value of each claimed advantage or benefit.

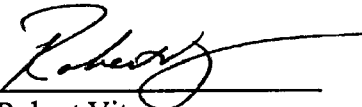
6. Beginning with the 2015 rental year, for each claimed advantage or benefit identified in response to Interrogatory 5, state by year the amount of money that Duke Energy Progress collected from each entity identified in response to Interrogatory 2 concerning that competitive benefit. Include in your response all formulas, calculations, inputs, assumptions, and source data used to invoice these amounts.

7. Beginning with the 2015 rental year, state the rate of return used by Duke Energy Progress in the calculation of rates under 47 C.F.R. § 1.1406(d), including the cost of debt, cost of equity, and capital structure, and, if different, Duke Energy Progress's state-authorized weighted average cost of capital and/or weighted cost of equity, including, as appropriate, the cost of debt, cost of equity, and capital structure. Include in your response the formula, calculations, inputs, assumptions, and source data used.

8. Identify all data regarding poles jointly used by Duke Energy Progress and AT&T, including all survey, audit or sampling data concerning pole height, the average number of attaching entities, the space occupied by Duke Energy Progress, AT&T, and any other entity. Include in your response when the data was compiled or collected, the entity or entities that compiled or collected it, the accuracy requirements, if any, imposed or related to the compilation or collection of the data, and the rules, parameters, guidelines, upon which the data was collected.

Respectfully submitted,

Christopher S. Huther
Claire J. Evans
Frank Scaduto
WILEY REIN LLP
1776 K Street NW
Washington, DC 20006
(202) 719-7000
chuther@wiley.law
cevans@wiley.law
fscaduto@wiley.law

By: 
Robert Vitanza
Gary Phillips
David Lawson
AT&T SERVICES, INC.
1120 20th Street NW, Suite 1000
Washington, DC 20036
(214) 757-3357

Dated: September 1, 2020

*Attorneys for BellSouth Telecommunications,
LLC d/b/a AT&T North Carolina and d/b/a
AT&T South Carolina*

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2020, I caused a copy of the foregoing AT&T's First Set of Interrogatories to Duke Energy Progress to be served concurrently with AT&T's Pole Attachment Complaint on the following (service method indicated):

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9050 Junction Drive
Annapolis Junction, MD 20701
(by ECFS)

Duke Energy Progress, LLC
c/o CT Corporation System
160 Mine Lake Court
Suite 200
Raleigh, NC 27615
(by hand delivery)

Kimberly D. Bose, Secretary
Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426
(by overnight delivery)

Public Service Commission of South Carolina
101 Executive Center Drive
Suite 100
Columbia, SC 29210
(by overnight delivery)

North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699
(by overnight delivery)



Frank Scaduto

